United Nations CAT/C/56/D/565/2013

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
11 February 2016
English
Original: French

Committee against Torture

Communication No. 565/2013

Decision adopted by the Committee at its fifty-sixth session (9 November-9 December 2015)

Submitted by:	S.A.P. et al. (represented by counsel, Mr. Marcel Zirngast)
Alleged victim:	S.A.P. et al.
State party:	Switzerland
Date of complaint:	11 November 2013 (initial submission)
Date of present Decision:	25 November 2015
Subject matter:	Expulsion of complainants to the Russian Federation
Procedural issues:	None
Substantive issues:	Risk of torture upon return to the country of origin
Article of the Covenant:	3

GE.16-01900 (E) 160216 160216

Please recycle

Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-sixth session)

concerning

Communication No. 565/2013

Submitted by:	S.A.P. et al. (represented by counsel, Mr. Marcel Zirngast)
Alleged victim:	S.A.P. et al.
State party:	Switzerland
Date of complaint:	11 November 2013 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 25 November 2015,

Having concluded its consideration of complaint No. 565/2013, submitted to the Committee against Torture by S.A.P. et al., under article 22 of the Convention,

Having taken into account all information made available to it by the complainants, their counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention

1.1 The complainants are S.A.P., born on 11 February 1982, and V.P., born on 15 December 1981, both Russian citizens, and their two children aged 4 and 1 years, who currently live in Ermatingen, Switzerland. They are facing a deportation order issued by the Swiss Federal Office for Migration, and they maintain that their forced repatriation to the Russian Federation would constitute a violation by Switzerland of article 3 of the Convention. The complainants are represented by counsel, Mr. Marcel Zirngast.

1.2 The complainants wish the Committee to ask the State party not to return them to their country of origin and to grant them asylum, or temporary admission. Pursuant to article 114 of its rules of procedure, on 13 November 2013, the Committee requested the State Party not to deport the complainants to the Russian Federation while their complaint was being considered. On 28 November 2013, the State party informed the Committee that, in accordance with its established procedure, the Federal Office for Migration had requested the competent authority not to take any steps to deport the complainants. They were thus assured that they could stay in Switzerland while their communication was being considered by the Committee and that the suspensive effect would not be removed.

The facts as submitted by the complainants

2.1 The first complainant, S.A.P., is of Armenian descent and the daughter of an airline pilot who was the victim of an aeroplane hijacking incident in 1985. Her father managed

to make an emergency landing, but the Soviet authorities claimed that he had died following the disappearance of the aircraft. When he returned to the Soviet Union, he was stripped of his command and underwent numerous interrogations by the KGB, which tried to hold him partially responsible for the hijacking of his aeroplane. These events caused serious tensions in the complainant's family.

2.2 In 2008, the father recounted these events to the complainant who, overwhelmed by the account, decided to make them public. She wrote a detailed article describing the events of December 1985. She contacted a Moscow newspaper which, in September 2009, invited her to go and meet with the editor. The newspaper accepted her article and took down all her personal details. After the meeting, the article was published. On 14 October 2009, the police turned up at the complainant's house in Moscow and arrested her. She was interrogated, insulted, threatened, beaten and kicked until she signed a confession, and was eventually thrown unconscious into the street. She received treatment in one hospital, where the threats continued, and she was forced to move to another hospital.[1] In the meantime, her apartment had been set on fire leaving her with no choice but to go and stay with the other complainant — her partner at that time and now her husband — in Krasnoyarsk.

2.3 Following the events of 14 October 2009, S.A.P. filed a complaint with the public prosecutor's office. The authorities informed her that an investigation had been conducted, but that no irregularities had been found. V.P. persuaded her to make the events public. She therefore tried again to get her article published, adding to it details of the incident which had taken place on 14 October 2009. On 30 December 2009, the article was published in the magazine *Argumenty Nedeli* in a humorous form, which trivialized the events.[2]

2.4 On 3 January 2010, the police went to the complainants' home and arrested them, together with the three guests visiting their home that evening. The five persons were accused of forming a political opposition group. S.A.P. was violently threatened, beaten, tortured and even raped by the police, who told her that her husband had been killed and that the same fate awaited her if she did not confess. On 7 January 2010, the police threw her out into the street. Following their arrest, both complainants were hospitalized. S.A.P. has a medical certificate from the hospital in Krasnoyarsk which confirms the rape and the related physical consequences. The complainants were also asked to sign a confession stating that they had defamed the Russian State and regretted their action.

2.5 When the complainants protested that their account of the events had been trivialized by the magazine, a more detailed version of the article was republished on 28 January 2010. After 1 February 2010, the complainants decided to go into hiding. They lived in hiding in Tula for over a year. On 21 April 2011, the computer of V.P. was hacked: when he opened an e-mail, a banner appeared showing an image of him being killed, and a woman with his wife's face being raped. On 23 April 2011, the complainants had to leave their apartment because the daughter of S.A.P. had an asthma attack. She should have been hospitalized, but the complainants were too afraid to be seen in public. While they were on their way home, the police tried to stop them and fired shots at them. However, they managed to get away in their car. They stayed hidden in a monastery in St. Petersburg until their departure for Switzerland on 26 August 2011. Since their arrival in Switzerland, S.A.P. has been undergoing psychiatric treatment for post-traumatic stress disorder, depression and risk of suicide. She has two medical certificates from the psychiatric hospital and a medical certificate showing that her nose

[1] S.A.P. was taken to hospital by passers-by who found her in the street. Since the persecution continued, her father took her to another hospital. The complaint does not provide any other details of the hospitals concerned.

[2] According to the Federal Administrative Court, a copy of the article was submitted to the authorities.

had been broken as a result of the ill-treatment she suffered before leaving the Russian Federation.

2.6 On 30 August 2011, the complainants filed an application for asylum in Switzerland. On 30 March 2013, the application was rejected at first instance by the Federal Office for Migration, which considered that the complainants' account was not credible. The complainants lodged an appeal against the decision before the Federal Administrative Court. This appeal too was dismissed by the Court, on 14 October 2013. Both the Federal Office for Migration and the Federal Administrative Court held that their "story was invented and greatly exaggerated, difficult to understand and made no sense". Thereafter the Federal Office for Migration set 13 November 2013 as the date by which the complainants must leave the country. Since that date, the complainants have no longer been permitted to remain in Switzerland and may be deported to the Russian Federation at any time.

2.7 The complainants claim to have exhausted all available domestic remedies.

The complaint

3.1 The complainants allege that they have been persecuted and subjected to ill-treatment by the Russian authorities as a result of the publication, in September and December 2009 and in January 2010, of an article in which they criticize the attitude of Soviet authorities during the aeroplane hijacking that took place in 1985. The authors fear that they would be subjected to torture or inhuman and degrading treatment if they were returned to their country of origin.

3.2 The complainants claim a violation of article 3 of the Convention owing to the risk of persecution by the authorities of the Russian Federation and that, in consequence, they would have to fear seriously for their lives and physical integrity if deported. In the complaint, they claim that the political legacy of the Soviet era lives on in the Russian Federation today and that the KGB is continuing its activities.

State party's observations on the merits

4.1 On 12 May 2014, the State party submitted its observations, in which it noted that the authors were doing no more than reiterating to the Committee the reasons adduced in support of their asylum application and referring to the evidence produced in support thereof, without providing any new evidence likely to call into question the decisions of the Federal Office for Migration and the Federal Administrative Court. The State party recalls that the authors applied for asylum in Switzerland on 30 August 2011. Their first hearing took place on 6 September 2011. S.A.P. was heard again by the Federal Office for Migration on 13 November and 10 December 2012; V.P. on 9 January 2013. In its decision of 28 March 2013, the Federal Office for Migration dismissed the asylum applications on the grounds that the authors' allegations lacked credibility. In its judgement of 14 October 2013, the Federal Administrative Court dismissed the appeal filed by the authors against that decision.

4.2 The State party recalls that, under article 3 of the Convention, States parties are prohibited from expelling, returning or extraditing a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. Referring to the criteria established by the Committee in its general comment No. 1 (1997) on the implementation of article 3 of the Convention, which require the complainant to prove that he or she runs a personal, present and substantial risk of torture if deported to his or her country of origin, the State party recalls that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion and, furthermore, that facts must be adduced which indicate that the risk is serious. According to the State party, the authors have not demonstrated, either before the national courts or

before the Committee, the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the Russian Federation.

4.3 In their submission, the complainants claim that the political legacy of the Soviet era lives on in the Russian Federation today and that the KGB is continuing its activities. In addition, they allege that, as members of the Caucasian ethnic group, they have to face strong resentment because of dominant Russian nationalism. However, they have not substantiated their allegations in any way. In addition, the national authorities have taken account of the somewhat repressive practices of the Russian security services in their decisions and judgements. The State party recalls that the situation in the complainants' country of origin does not constitute, by itself, sufficient grounds to conclude that they would be at risk of being tortured if returned there. The State party considers that the authors have not demonstrated that they would run a foreseeable, real and personal risk of being subjected to torture if they were returned to the Russian Federation.

4.4 Before the Committee, the complainants submit that S.A.P. was arrested by the police on 14 October 2009, following the publication of her article, and that she was interrogated, insulted, threatened and beaten until she signed a confession. She was subsequently released and thrown, unconscious, into the street. Passers-by found her and took her to hospital where her persecution continued. Her apartment was also set on fire. Following the second publication of the article at issue, on 30 December 2009, the authors were arrested by the police at their home, while they were entertaining guests there. S.A.P. was threatened, beaten, tortured and raped by the police before being released. She was subsequently hospitalized for three weeks. The second complainant, V.P., was also threatened and beaten and had to be hospitalized. The State party submits that the complainants told the same story to the national authorities, which carefully examined their allegations. The national authorities found that the complainants' claims regarding the alleged ill-treatment as a consequence of the publication of their article were not credible. Regarding the medical reports produced by the complainants, both during the national asylum procedure and before the Committee, as noted by the national authorities, while they document possible physical or mental injuries, they do not document their cause.

4.5 Concerning the medical reports relating to the psychological problems of S.A.P., the Federal Administrative Court held that torture is always a traumatizing experience, but that it does not necessarily cause mental illness, in particular post-traumatic stress disorder. It follows that the depression and post-traumatic stress disorder with which S.A.P. was diagnosed are not in themselves evidence of the alleged ill-treatment. They were taken into consideration by the national authorities in order to assess the credibility of the complainants' allegations, in conjunction with other decisive factors. The same applies to the medical report prepared for the authors' daughter. The State party further states that it is clear from the police records at its disposal that the police had had to intervene on several occasions at the complainants' home to deal with incidents of domestic violence. According to the police report, the authors' daughter witnessed an altercation between her parents, during which there was physical violence. Such incidents could clearly also affect the mental state of the complainants and their daughter, and cannot be excluded as the cause of their problems.

4.6 The State party emphasizes that the complainants do not claim to have engaged in political activities in their home country or in Switzerland.

4.7 What emerges above all from the decisions of the national asylum authorities is that the complainants' allegations are not credible and that their statements do not support the conclusion that there are substantial grounds for believing that they would risk torture if returned to their country of origin. The State party cites in full the reasons adduced for these decisions. It should be noted, however, that the national authorities did not question whether the hijacking of the aeroplane in 1985 had actually occurred or

whether articles about it had been published in the press. All the same they considered that the complainants' claims regarding their alleged risk of persecution if returned to the Russian Federation were manifestly exaggerated, even allowing for the somewhat repressive practices of the Russian security services.

4.8 The State party's authorities noted that the events described in the press articles in question took place in 1985, in a State that no longer exists. Therefore, even though the articles were critical of the conduct of the Russian authorities in 1985, the current Russian Government has no interest in pursuing the authors for the incident. The press articles contain no criticism of the current Russian Government, except where, in the version published on 28 January 2010, the author of the article observes that the actions of the pilot of the aeroplane hijacked in 1985 had still not been recognized and that the State bodies responsible should remedy that. It is hard to believe that the Russian Government should have reacted as violently as the complainants claim solely on the basis of such a publication.

4.9 The State party adds that the national authorities have observed, quite rightly, that it is hard to believe that the authorities of the Russian Federation could have persecuted the authors and their friends as described, while the father of S.A.P., who was the key figure in the complainants' story, was not harassed, yet there was apparently a photograph of him in the newspaper article of 28 January 2010, with the information that he was acting representative of the Yakutia airline company in Moscow.

4.10 Similarly, it is hard to understand why Sergei Nechamkin, author of the articles of 28 January and 18 February 2010, was not harassed while the complainants, whose names are not mentioned in the articles in question, allegedly were harassed. The national authorities have also observed that it made no sense for the Russian authorities to release the complainants twice, if they had really had an interest in pursuing their case. For example, it is difficult to understand why the complainants were not rearrested at the hospital in Krasnoyarsk in 2010. The national authorities have also noted that it is not clear from the complainants' allegations what scandal could have been caused by the article in question. Following the alleged hijacking, the father of S.A.P. was allegedly suspended and harassed. However, it is difficult to understand why that should have been the case, since there was nothing which could be held against him. The national authorities have also stated that the complainants' claims that World War III could have been triggered by the hijacking were exaggerated. Moreover, it is also difficult to understand why the complainants, a young couple, would have risked being arrested, imprisoned and subjected to torture for the publication of a story that was long outdated, did not concern them personally and from which they derived no benefit. All the more so, since allegedly they had decided on two occasions, after supposedly being ill-treated by the Russian authorities following the publication of their article, to republish it.

4.11 The national authorities noted that the manner in which the authors left the Russian Federation also undermined the credibility of their story. V.P. had obtained a new passport in 2010. S.A.P. and her daughter had obtained a passport in St. Petersburg on 19 April 2011. Three months later, the applicants left the Russian Federation. These events suggest that their exile had already been planned for some time. Furthermore, the complainants did not encounter any difficulty in obtaining their passports. They were able to leave the Russian Federation by plane without hindrance to come to Switzerland, and were subsequently able to return to the Russian Federation without any difficulty. If the Russian authorities had really had an interest in pursuing the complainants, those trips would hardly have been possible. It is also not plausible that if the complainants feared persecution in the Russian Federation, they would have taken the risk, in 2010, of returning there, when they already had the opportunity at that time to file an application for asylum in Switzerland. Finally, the national authorities declared that the documents submitted by the complainants were not acceptable for the purpose of proving their

allegations. For example, the evidence submitted to the Federal Office for Migration, such as the articles relating to the hijacking, has no probative value, since at the very most it confirms that the articles were published, but that does not in any way establish what the consequences were for the authors. Similarly, with regard to the medical certificates produced by the applicants, the national authorities noted that they have very little probative value.

4.12 The State party further explains that, according to the police reports drafted in connection with the episodes of domestic violence at the complainants' home, one of the causes of the violence was the fact that V.P. was visiting Russian dating sites. This finding is not consistent with the complainants' statements that they wished at all costs to keep their whereabouts unknown and that, consequently, they cannot contact their relatives in the Russian Federation. In addition, V.P. told the police that he wished to return to the Russian Federation, which is difficult to reconcile with the fear of ill-treatment upon return. In view of the foregoing, the State party fully endorses the reasons given by the Federal Office for Migration and the Federal Administrative Court concerning the lack of credibility of the authors' allegations. The authors' assertions that they would risk being subjected to torture if returned to the Russian Federation do not seem to be based on real events and are insufficiently substantiated. Before the Committee the complainants essentially repeat their story, without making it any more plausible.

4.13 The two new medical certificates submitted by the authors to the Committee, drawn up in Switzerland and dated 23 October and 1 November 2013, are unlikely to bring into question the findings of the national authorities, insofar as they certify that the complainants had psychological problems but give no evidence of what caused them. The complainants have therefore produced no new evidence proving their actual persecution by the Russian authorities. Yet in view of their allegations, the national authorities had every right to expect them to do so. The complainants claim that their home was set on fire, that a friend was murdered and that gunshots were fired at them. They also claim that they have been arrested on two occasions and have filed a complaint with the Russian public prosecutor's office, to which the office allegedly replied. It is therefore hard to believe that the complainants are unable to furnish documentary evidence of these events, since they relate, on the one hand — with regard to their correspondence with the public prosecutor's office — to official acts which are generally well documented and, on the other hand, to events that should have been reported in the press.

4.14 The State party also underlines that S.A.P.'s state of health is not a relevant criterion in determining whether there are substantial grounds for believing that the complainants risk being subjected to torture if deported. Accordingly, the comments on the health of S.A.P. are purely for information purposes. Moreover, according to the Committee's jurisprudence, the aggravation of an individual's physical or mental state of health due to deportation is generally insufficient, in the absence of other factors, to amount to degrading treatment in violation of article 16 of the Convention.[3] As noted by the Federal Administrative Court, the complainants' problems can be treated in the Russian Federation. The State party has therefore concluded that there is no indication of any substantial grounds for fearing that the authors would be specifically and personally at risk of torture if returned to the Russian Federation. Their allegations and the evidence provided do not support the conclusion that deporting the complainants would expose them to a real, specific and personal risk of being subjected to torture. Therefore, the deportation of S.A.P., V.P. and their children to the Russian Federation would not constitute a violation of the State party's international obligations under article 3 of the Convention.

[3] Cf. for example *A.A.C. v. Sweden*, communication No. 227/2003, para. 7.3.

The complainants' comments on the State party's observations

5.1 On 25 August 2014, the complainants submitted comments on the State party's observations. Essentially, they emphasize that the State party merely repeats the arguments put forward by the Federal Office for Migration and the Federal Administrative Court in their decisions of 28 March and 14 October 2013. According to the complainants, the State party does not mention the detailed explanations given in their notice of appeal of 11 November 2013, and for this reason the explanations they gave are still relevant.

5.2 The complainants add that the State party emphasizes their relationship problems, documented in the criminal case files submitted. On this basis, the State party suggests that the problems of S.A.P. might stem from the conflict between the couple. The complainants refute the State Party's assertion — with reference to the criminal cases — that V.P. had visited Russian dating sites where he had indicated that he wished to return to the Russian Federation. However, they do admit that there are marital tensions between them. According to the case files, the complainants live under psychologically trying conditions at the home of the mother of S.A.P., and, in particular, that V.P. and his mother-in-law are clearly at odds with each other. There has indeed been some conflict and a minor assault. However, this is by no means comparable to the documented injuries that the complainant sustained in the Russian Federation. It is therefore highly implausible to speculate, on the basis of these case files, that the tensions between the couple might have caused them to flee to Switzerland. If that were the case, S.A.P. would not have fled to Switzerland and would not have married V.P. in Switzerland. Moreover, it is clearly documented that not only S.A.P., but also V.P., sustained injuries while they were in the Russian Federation.

5.3 The reasons for and the extent of the tensions between the complainants may be disputed. What is certain, however, is that the dismissal of their asylum application by the Swiss authorities and, consequently, the risk of being sent back to the Russian Federation are a source of considerable psychological stress for both of them, stress that can hardly do the couple any good. Barring several periods of treatment in a psychiatric clinic, however, the applicants have lived together all the time and still live together. The complainants contest the assertion that V.P. had said that he wished to return to the Russian Federation. He simply stated that he could no longer stand living with his mother-in-law and that he wished to leave her house. Conversely, it is clearly documented that the mother-in-law considers V.P. to be a very bad husband for her daughter. The alleged statement that he wished to return to the Russian Federation should be seen as a misunderstanding, as borne out by his statement made in the same context, to the effect that he wished to obtain political asylum in Switzerland. In the meantime, following an improvement in their housing situation, the family tensions have been defused.

5.4 The fact that the complainant had contact with Russian women on the Internet does not in any way give the lie to the dangerous situation that the complainants may face in the Russian Federation. As everyone knows, such contacts are made anonymously or with a virtual identity, and having such contacts is therefore not incompatible with the fact that the complainants do not keep in touch with their relatives in the Russian Federation — lest they put them at risk.

5.5 The complainants emphasize in their complaint that they have clearly demonstrated why they must fear for their lives and physical integrity in the Russian Federation. S.A.P. has documented the extremely serious injuries that she sustained. It is true that the documentation on the injuries per se does not provide absolute proof as to the cause of the injuries recorded. The injuries do, however, give a very clear indication that the complainants would seriously have to fear for their lives and physical integrity in the

Russian Federation. Strict proof is neither reasonable nor necessary. As explained in the complaint of 11 November 2013, the situation of persecution described by the complainants is too distinctive to have been invented in such detail. Furthermore, there is undeniably no indication that in the meantime the human rights situation in the Russian Federation has improved, or any prospect that it might improve in the future — quite the contrary. As requested, the complainants should not be returned to the Russian Federation.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee notes that the State party has not contested the admissibility of the communication. As the Committee finds no further obstacles to admissibility, it declares the communication admissible.

Consideration of the merits

7.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

7.2 The Committee must assess whether there are substantial grounds for believing that the complainants would personally be in danger of being subjected to torture if returned to the Russian Federation. In assessing this risk, the Committee must, pursuant to article 3, paragraph 2, of the Convention, take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim is to establish whether the individuals concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which they would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not of itself constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individuals concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.[4]

7.3 The Committee recalls its general comment No. 1 and reiterates that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion". Although the risk does not have to be "highly probable" (para. 6), it must nonetheless be real and personal. The Committee recalls that the burden of proof normally falls on the complainant, who must present an arguable case establishing that he or she runs a "foreseeable, real and personal" risk. It further recalls that, in accordance with this general comment, considerable weight will be given to findings of fact that are made by organs of the State party concerned, but that it is not bound by such findings and instead

[4] See for example communication No. 490/2012, *E.K.W. v. Finland*, decision adopted on 4 May 2015, para. 9.3.

has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.[5]

7.4 In the present case, the Committee notes that the complainants invoke a violation of article 3 of the Convention because of an alleged risk of persecution by the authorities of the Russian Federation. The Committee further notes that the complainants claim that they were persecuted and subjected to ill-treatment by the Russian authorities following the publication, in September and December 2009 and in January 2010, of an article in which they criticize the attitude of Soviet authorities during the hijacking of an aeroplane that occurred in 1985. S.A.P. claims that, as a result, she sustained extremely serious injuries and suffered from post-traumatic stress disorder. However, the Committee considers that the complainants have not provided sufficient evidence to allow it to conclude that the attested injuries were caused by the alleged acts of persecution and ill-treatment by those authorities. The Committee further notes that the complainants have not submitted any information that would permit a finding that they would be at risk of ill-treatment if they were deported to their country of origin.[6] Although the alleged events occurred in 2009, 2010 and 2011, the complainants did not file a complaint with or seek the protection of the Russian authorities at the time, and the author of the article published in 2011 has not suffered any form of ill-treatment. Given that there is no evidence to show that the criminal justice authorities are still interested in the complainants, the Committee considers that the complainants have not adduced sufficient evidence to show that they would in fact be at risk of persecution or prosecution by the judicial authorities if they were returned to the Russian Federation.

7.5 Similarly, the Committee takes note of the State party's observations that the way in which the authors left the Russian Federation undermines the credibility of their story. The Committee therefore considers that the material on file does not allow it to conclude that the Swiss authorities failed to conduct an in-depth investigation into the complainants' allegations during the asylum and review procedures. There is no other material available to the Committee to demonstrate that the complainants face a foreseeable, real and personal risk of being subjected to torture in their country of origin.

7.6 The Committee recalls paragraph 5 of its general comment No. 1, according to which the burden of presenting an arguable case lies with the author of a communication. In the circumstances of this case, in the Committee's opinion, the complainants have not discharged that burden of proof.

8. In the light of the above, the Committee, acting under article 22, paragraph 7, of the Convention, finds that the complainants' deportation to the Russian Federation by the State party would not constitute a breach of article 3 of the Convention.

---

[5] See general comment No. 1, para. 9; and communication No. 375/2009, *T.D. v. Switzerland*, decision adopted on 26 May 2011, para. 8.7.

[6] See communication No. 154/2000, *M.S. v. Australia*, decision adopted on 23 November 2001, para. 6.5.